

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH)	C.A. No. 1:05-CV-11148-PBS
BENEFITS FUND, PIRELLI ARMSTRONG)	
RETIREE MEDICAL BENEFITS TRUST;)	
TEAMSTERS HEALTH & WELFARE FUND)	
OF PHILADELPHIA AND VICINITY;)	
PHILADELPHIA FEDERATION OF)	
TEACHERS HEALTH AND WELFARE)	
FUND; DISTRICT COUNCIL 37, AFSCME -)	
HEALTH & SECURITY PLAN; JUNE)	
SWAN; BERNARD GORTER, SHELLY)	
CAMPBELL and CONSTANCE JORDAN)	
)
Plaintiffs,))
)
v.))
)
FIRST DATABANK, INC., a Missouri))
corporation; and McKESSON))
CORPORATION, a Delaware corporation,))
)
Defendants.)	

PLAINTIFFS' SURREPLY IN RESPONSE TO MCKESSON'S PROPOSED REPLY IN SUPPORT OF ITS MOTION FOR A PROTECTIVE ORDER

McKesson falsely claims that Plaintiffs “concede” that they are seeking data regarding drugs purchased by insured consumers. Plaintiffs make no such concession. The information sought demonstrates the relationship between AWP and U&C prices and therefore falls within the discovery authorized by the Court’s scheduling order. McKesson’s position is furthermore disingenuous as its own pricing service, Auto-Rx-Net, directs pharmacies to set their U&C prices in accordance with AWP-based third-party reimbursement rates.

Further, McKesson misses the point regarding Plaintiffs’ discussion of its RelayHealth subsidiary and Auto-Rx program. McKesson does not, nor can it deny that through its subsidiary

RelayHealth (processing claims from “90% of US pharmacies”) it is uniquely placed in the industry to follow price trends and to draw correlations between U&C and AWP. In direct contrast to McKesson’s own representations to the Court that there is no correlation between the U&C and AWP, Auto-Rx demonstrates how McKesson has profited from RelayHealth’s transactional information by selling a program to set U&C prices based on AWP by means of third-party reimbursement rates.

McKesson’s attempt to disassociate its U&C pricing program from AWP falls on its face, as McKesson is forced to concede that regardless of whether the 101% feature is utilized, the Auto-Rx program raises U&C prices above the average AWP-based third-party reimbursement, demonstrating a direct correlation between those price figures. Reply at 4. And while the Auto-Rx program may only have been introduced in 2005 and may have only reached a small “niche” market, that is not to say that the underlying premise of the product (setting U&C prices above AWP-based third-party reimbursement rates so as to maximize third-party reimbursement) is not in wide use throughout the market or that other variations of this principle were not in play in the 2001-2005 period.

Contrary to McKesson’s representation, Plaintiffs’ request for transactional data from third-party pharmacies to track and analyze the changes to their third-party reimbursement prices relative to their U&C prices is distinct from and not already encompassed by Plaintiffs’ other U&C discovery requests. The requested data will allow Plaintiffs to examine the effect of the AWP on U&C pricing *vis à vis* third-party reimbursement. This request reasonably falls within the Court’s order authorizing limited, additional discovery to uncover the correlation between AWP and the U&C.

Dated: February 22, 2008

By /s/ Steve W. Berman

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party through the Court's electronic filing service on February 22, 2008.

/s/ Steve W. Berman

Steve W. Berman